

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 17, 2002

IN RE:

**APPLICATION OF THE OTHER PHONE
COMPANY, INC., D/B/A ACCESS ONE
COMMUNICATIONS FOR AMENDED
AUTHORITY TO PROVIDE FACILITIES
BASED COMPETING LOCAL
TELECOMMUNICATIONS SERVICES**

)
)
)
)
)
)
)

DOCKET NO. 99-00694

**INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

On November 13, 2002, this matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority") upon The Other Phone Company, Inc., d/b/a Access One Communications' *Application for Amended Authority Certificate to Provide Competing Local Telecommunications Services* ("Application") filed on August 20, 2002. The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

The *Application* of The Other Phone Company d/b/a Access One Communications ("OPC") was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory

already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.¹

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *See In Re: AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, FCC Memorandum Opinion and Order (May 27, 1999); FCC Memorandum Opinion and Order (January 8, 2001).

The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity*, Authority Docket No. 02-00230 (June 28, 2002).

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the Hearing in this matter was issued by the Hearing Officer on November 1, 2002, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the Hearing.

OPC'S HEARING

OPC's *Application* was uncontested. At the Hearing held on November 13, 2002, Mr. Alan Kirk, Director of ILEC Relations, participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer. Upon OPC's conclusion of proof in its case, the Hearing Officer granted OPC's *Application* based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. OPC is a corporation organized under the laws of Florida on April 19, 1996, and was qualified to transact business in Tennessee on April 6, 1998. OPC is a subsidiary of Talk America Holdings, Inc., formerly known as Talk.com Holding Corp.

2. The complete street address of OPC's corporate service provider is 12001 Science Drive, Suite 130, Orlando, Florida 32826. The phone number is (214) 863-8700 and facsimile number is (214) 863-9235. OPC's counsel are Henry M. Walker, Esq., and April A. Ingram, Esq., of Boulton, Cummings, Connors & Berry, P.L.C., 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, TN 37219-8062.

3. The *Application* and supporting documentary information existing in the record indicate that OPC has the requisite technical and managerial ability to provide competing local telecommunications services within the State of Tennessee. Specifically, OPC's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. OPC has the necessary capital and financial ability to provide the services it proposes to offer.

5. OPC has represented that it will adhere to all applicable policies, rules and orders of the Authority. At the November 13, 2002 Hearing, Mr. Kirk stated that OPC will comply with the Authority's September 9, 2002 Order in Docket No. 01-00216, in which the Authority approved a settlement agreement between the Consumer Services Division of the Tennessee Regulatory Authority and Talk.com Holding Corp. relating to alleged violations of Tenn. Code Ann. § 65-4-125(a) and (b) and Tenn. Code Ann. § 65-4-401 *et seq.*, which includes the implementation of safeguards designed to ensure compliance with the provisions of these statutes.²

II. PROPOSED SERVICES

OPC intends to offer competing local telecommunications services, including exchange access telecommunications services, to customers within the State of Tennessee.

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of OPC's *Application* would inure to the benefit of the present and future public

² See *In Re: Talk.Com, Inc.*, Docket No. 01-00216, *Order Approving Settlement Agreement* (September 9, 2002).

convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

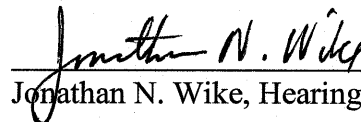
1. OPC has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. OPC has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. The *Application* of The Other Phone, Inc., d/b/a Access One Communications is approved; and

2. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration within fifteen (15) days from and after the date of this Order.


Jonathan N. Wike, Hearing Officer